

REMARKS/ARGUMENTS

The Office Action rejected all pending claims in the application over prior art as either anticipated or obvious under 35 USC 102 and 103. There are twenty-four claims pending, of which Claims 1, 7, and 16 are independent claims. Claims 1 and 7 were both rejected in the Office Action as anticipated under 35 USC 102(e) by prior art, while Claim 16 was rejected as obvious under 35 USC 103(a).

In particular, Claims 1 and 7 were both rejected in the Office Action as anticipated by the same patent. Specifically, the Office Action asserted that US Patent No. 5,969,968 to Pentel anticipated each of Claims 1 and 7. With respect to this rejection of Claims 1 and 7, the Office Action stated:

Pentel teaches a system for fulfilling services orders onboard a transport vehicle, the system comprising: (a) a plurality of computers that include an onboard computer transported with the vehicle, and an external computer not transported with the vehicle; (b) software installed on the onboard computer, the onboard computer software being operable on the onboard computer for causing the onboard computer to perform tasks including: i) obtaining service information from the external computer via communication with the external vehicle computer if a communication pathway to the external vehicle computer is open; and ii) providing access to service information by vehicle personnel for fulfillment of the service orders; and (c) software installed on the external computer, the external computer software being operable on the external vehicle computer for causing the external computer to perform tasks including: i) acquiring information to determine the available services provided on the transport vehicle; and ii) managing the delivery of services to the transport vehicle; and iii) making service information obtainable by the onboard computer (col. 1, lines 47-col. 2, lines 38, Figs. 1 and 2).

According to Col. 1, lines 47-59, Pentel teaches a remote ordering system for a restaurant drive-through lane. Pentel describes the system as including an input device having a keypad, a transmitter, and a drive-up ordering station adjacent the restaurant drive-through lane. The drive-up ordering station has a posted visual menu, a receiver tuned to the transmitter, and a communications link to a point-of-sale system. The remote device is preferably hand-held and operated from within the vehicle.

1 Applicant respectfully traverses the rejection of Claims 1 and 7 because Pentel does
2 not meet all of the recitations of either claim. MPEP 706.02(IV) provides that "for
3 anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed
4 invention either explicitly or impliedly. Any feature not directly taught must be inherently
5 present." Further in support of this requirement, MPEP 2131 quotes the Court of Appeals for
6 the Federal Circuit in *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913,
7 1920 (1989) stating that "[t]he identical invention must be shown in as complete detail as is
8 contained in the . . . claim."

9 Claim 1 recites "a plurality of computers that include an onboard computer
10 transported with the vehicle, and an external computer not transported with the vehicle" and
11 "software installed on the onboard computer". The claim further recites:

12 [T]he onboard computer software being operable on the onboard computer for
13 causing the onboard computer to perform tasks including:

14 i) obtaining service information from the external computer via communication
15 with the external vehicle computer if a communication pathway to the external
16 vehicle computer is open; and

17 ii) providing access to service information by vehicle personnel for fulfillment
18 of the service orders;

19 There is no teaching or suggestion in Pentel of an onboard computer that performs
20 either of i) or ii) above. Concerning i), Pentel does NOT teach that the hand-held device
21 includes a receiver. Thus, the remote device as taught by Pentel cannot obtain service
22 information from the external computer. With respect to ii), there are no vehicle personnel
23 fulfillment for fulfillment service orders in the system disclosed by Pentel. The only access to
24 service information is provided by an external computer for fulfillment of service orders by
25 NON-vehicle personnel, i.e., restaurant employees. Even if there were vehicle personnel for
26 fulfillment of service orders in the system of Pentel, the remote device still could not provide
access to service information because it does not include a display as can be seen from Fig. 2
of Pentel.

1 Claim 1 additionally recites "external computer software being operable on the
2 external vehicle computer for causing the external computer to perform tasks
3 including...acquiring information to determine the available services provided on the
4 transport vehicle". There is no teaching or disclosure in Pentel of this recitation as Pentel
5 does not teach providing services on a transport vehicle. To the contrary, Pentel discloses
6 only offering a predetermined menu (30) to the customer and does not disclose or suggest
7 "acquiring information to determine the available services provided on the transport vehicle".

8 Claim 7 recites in pertinent part an "onboard computer including software, which
9 when operated on the onboard computer and electronic devices causes the onboard computer
10 to perform tasks comprising accepting service orders entered via the electronic devices by
11 vehicle personnel or passengers and making the service orders accessible to vehicle
12 personnel." Again, there is no teaching or suggestion in Pentel of an onboard computer
13 including software that when operated on the onboard computer causes the onboard computer
14 to perform tasks comprising making service orders accessible to vehicle personnel. Pentel
15 does not teach or suggest "making service orders accessible to vehicle personnel" because
16 there are no vehicle personnel in the system taught by Pentel. Even if Pentel did teach or
17 suggest personnel entering a vehicle in the restaurant drive-through lane to fulfill a service
18 order, the hand-held device in Pentel does not include a display and thus such personnel
19 could not access service orders from the asserted onboard computer.

20 Thus, the cited prior art reference does not disclose the identical invention in as
21 complete detail as is contained in either of Claims 1 and 7. The rejection of each of Claims 1
22 and 7 under 35 USC 102 is therefore improper and should be withdrawn.

23 Neither is Claim 1 or 7 obvious in view of the cited reference as there is no
24 suggestion to modify the system of Pentel to meet the recitations of either claim. Pentel
25 teaches away from the invention defined by each claim in that Pentel teaches displaying
26 service information only on computers external to the vehicle. As stated in MPEP 2145, "[a]

1 prior art reference that 'teaches away' from the claimed invention is a significant factor to be
2 considered in determining obviousness". Pentel additionally teaches away from Claim 1 as
3 the suggestion in Pentel is that only a predetermined menu is presented to the customer. In
4 particular there is no teaching or suggestion in Pentel of any acquisition of "information to
5 determine the available services provided on the transport vehicle". The suggestion that only
6 a predetermined menu is offered, teaches away from the recitation in Claim 1 of "acquiring
7 information to determine the available services provided on the transport vehicle". For the
8 reasons discussed above, reconsideration and withdrawal of the rejection of each of Claims 1
9 and 7 is respectfully requested.

10 Claims 2, 6, and 8-11 were also rejected in the Office Action as being anticipated by
11 Pentel. Each of these claims depend directly or indirectly from one of Claims 1 and 7 and
12 further define and distinguish the invention defined by Claims 1 and 7 over Pentel.

13 For example, Claims 2 and 6 each depend from Claim 1 and further distinguish over
14 Pentel. Claim 2 recites that "the onboard computer software includes logic routines adapted
15 for managing delivery of products in accordance with service orders, and billing of
16 passengers for fulfillment of service orders." There is no teaching or suggestion in Pentel for
17 modifying the hand-held device to include such logic. To the contrary, the suggestion in
18 Pentel is that all such logic, if any, would be implemented on an external computer as the
19 hand-held device in Pentel does not include a receiver or display for communicating with an
20 external computer and making service orders accessible to vehicle personnel.

21 Claim 6 also further distinguishes over Pentel as Claim 6 recites that "the external
22 computer software further comprises software logic operable for managing flow of inventory
23 from the terminal to the vehicle and from other sources to the terminal." There is no teaching
24 or suggestion anywhere in Pentel of software logic for managing inventory flow "from other
25 sources to the terminal" as Pentel does not contemplate fulfilling service orders for vehicles
26 at a terminal, such as an airport.

1 Claims 3-5 and 12-15 were all rejected in the Office Action as obvious over Pentel in
2 combination with one or more other references. However, each of these claims depend
3 directly or indirectly from one of Claims 1 and 7 and further define and distinguish the
4 invention defined by Claims 1 and 7 over the cited prior art.

5 Claim 3 for instance, depends from Claim 2, and further recites that "the logic
6 routines associate a seat location with each service order." The Office Action acknowledges
7 that Pentel does not meet the foregoing recitation, but nevertheless asserts that this feature is
8 taught by US Patent No. 4,553,222 to Kurland.

9 Kurland is directed to an integrated interactive restaurant having table stations and
10 table station terminals. Each table station has a unique position identification to facilitate
11 order filling and billing. Restaurant patrons submit orders via a table station terminal by using
12 the unique position identification codes. According to the Kurland patent at Col. 7, lines 54-
13 59, restaurant patrons at table station 1 illustrated in FIG. 7, would identify themselves as 1-1,
14 1-2, 1-3, and 1-4, assuming four patrons at the table station.

15 According to the Office Action, it would have been obvious to incorporate the
16 features of Kurland directed to a seat position identifier code at a restaurant into the teachings
17 of the Pentel patent "in order to direct services to the appropriate seat." However, Pentel is
18 directed to a drive-up-restaurant scenario, and in these systems there is a single delivery
19 window from which the drive-up patron, who is the driver of the vehicle, receives the order.
20 If there is more than one person in the vehicle, the people in the vehicle distribute the items in
21 the order. The restaurant does not attempt to direct each item in the order to a particular seat
22 in the driver's vehicle.

23 In rejecting a claim as being an obvious modification of prior art, a reason must be
24 provided as to why one having ordinary skill in the pertinent art would have been led to
25 modify the prior art to meet the recitations of the claimed invention based on other than
26 hindsight. Uniroyal Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438

1 (Fed. Cir. 1988). Specifically, the teaching or suggestion to make the asserted modification
2 must be found in the prior art, and not based on applicant's disclosure. In re Vaeck, 947 F.2d
3 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

4 In this situation, there is no suggestion or motivation to modify the system of Pentel to
5 include seat position identifier codes because there is no teaching or suggestion in either
6 Pentel or Kurland to apply this to vehicles in the drive-through lanes of restaurants. It would
7 not be efficient for restaurant personnel to attempt to direct orders to individual seat locations
8 in a vehicle in the drive-through lane of a restaurant. The example used in Pentel is that of a
9 vehicle (V) appearing to have very limited seating and no examples are provided of vehicles
10 having numerous seat locations, such as a bus. The suggestion in Pentel is therefore that
11 orders are not directed to individual seat locations in the vehicle (V). Hence, there is
12 insufficient motivation to combine Pentel and Kurland in the manner asserted against Claim 3.

13 Another example is Claim 4, which depends from Claim 1. Claim 4 recites that "the
14 external computer software is further operable on the external computer for accepting service
15 orders prior to boarding and associates each service order with a vehicle departure and makes
16 the information obtainable by the onboard computer." The Office Action asserts that this is
17 disclosed by Kurland, presumably based upon the disclosure in the patent at Col. 8, lines 16-
18 21, that a table station terminal preferably displays a menu to patrons either before or after
19 seating.

20 Nevertheless, the suggestion in Kurland and Pentel is that the customers come to the
21 restaurant to order. That is, the cited patents teach away from the recitation of "accepting
22 service orders prior to boarding". The patrons in Kurland enter the restaurant to use the table
23 station terminal and therefore the patrons have already boarded, i.e., entered the restaurant.

24 Further, there is no disclosure in Kurland or Pentel directed to associating "each
25 service order with a vehicle departure" and making "the information obtainable by the
26 onboard computer". The only onboard computer disclosed by Pentel is a handheld device that

1 does not have a display or a receiver and thus it is not possible to make "information
2 obtainable by the onboard computer" in the asserted combination. Hence, Claim 4 further
3 distinguishes over the cited prior art references and the rejection of Claim 4 should be
4 withdrawn.

5 Yet another example is Claim 5, which depends from Claim 1. The Office Action
6 rejected Claim 5 as obvious over Pentel in view of US Patent No. 6,123,259 to Ogasawara.
7 The Office Action acknowledged that Pentel does not explicitly disclose software operable on
8 the asserted external computer for analyzing at least one of historical service order
9 information and currently entered service order information and which recommends vehicle
10 inventory based on the analysis. The Office Action also acknowledged that the Pentel patent
11 does not explicitly disclose the recitations in Claim 5 directed to associating each current
12 service order with a vehicle departure and making the information obtainable by the asserted
13 onboard computer. The Office Action, however, contends that the foregoing features are
14 disclosed in the abstract of the Ogasawara patent and that it would be obvious to combine the
15 teachings of Pentel and Ogasawara in order to recommend a replenishment item list.

16 The Ogasawara patent is directed to an electronic personal shopping system.
17 Nevertheless, the combination does not meet the additional recitations of Claim 5 because the
18 claim recites a vehicle inventory list. Ogasawara is directed to recommending replenishment
19 items for a customer, not inventory for the merchant. Furthermore, there is no disclosure in
20 the Pentel patent directed to carrying inventory on a vehicle. To the contrary, the suggestion
21 in Pentel is that inventory is maintained in a building, not the patron's vehicle. In addition, as
22 discussed above in connection with Claim 4, Pentel does not disclose making information
23 available to an onboard computer. Accordingly, Claim 5 further distinguishes over the cited
24 prior art.

25 Claim 10, in another example, depends from Claim 7 and recites "wherein the
26 electronic devices include handheld computers used by vehicle personnel for creating and

1 accessing service orders on the onboard computer by communication between the handheld
2 computers and the onboard computer." According to the Office Action, Claim 10 is rejected
3 as anticipated by Pentel. However, Pentel does not teach or suggest "creating and accessing
4 service orders on the onboard computer by communication between the handheld computers
5 and the onboard computer." To the contrary, Pentel only teaches creating services on an
6 external computer using a hand-held device that Pentel does not disclose as having a receiver
7 or a display. The suggestion in Pentel is therefore that the hand-held device functions only as
8 a remote control and service orders can neither be created on an onboard computer, nor
9 accessed from an onboard computer. According to the teachings of Pentel, such activity
10 occurs external to the vehicle. Claim 10 accordingly further distinguishes over Pentel.

11 These are just some examples of how claims dependent directly or indirectly from one
12 of Claims 1 and 7 further distinguish over the cited prior art. For brevity, further examples of
13 such claims dependent directly or indirectly from one of Claim 1 or 7 are omitted.

14 Turning to the last independent claim, Claim 16 is rejected as obvious over Pentel in
15 view of Kurland and further in view of US Patent No. 5,006,985 to Ehret. The Office Action
16 asserts that the combination of "Pentel and Kurland teaches the limitations of claims 16
17 and 17 except the step of accessing database information pertaining to vehicle departure and
18 destination". The Office Action nevertheless concludes that that it would have been obvious
19 "to modify Pentel to include this step." The motivation for the modification asserted in the
20 Office Action is in order to access a passenger itinerary.

21 The Ehret patent is directed to a computer system for minimizing body dysfunctions
22 induced by jet travel or shift work. The Office Action evidently cites Col. 35, lines 8-11 of
23 Ehret, which recite "a means for accessing a database of time zone information to obtain the
24 time zones of the trip departure location and the trip destination location in response to the
25 itinerary data".
26

1 The asserted modification is not proper for two main reasons. First, there is no basis
2 explicit or implicit in the cited patent references for the modification. As discussed earlier, in
3 rejecting a claim as an obvious modification of prior art, a reason must be provided as to why
4 one having ordinary skill in the pertinent art would have been led to modify the prior art to
5 meet the recitations of the claimed invention based on other than hindsight. Uniroyal Inc. v.
6 Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988). The
7 teaching or suggestion to make the asserted modification must be found in the prior art, and
8 not based on applicant's disclosure. In re Vaack, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir.
9 1991).

10 Both the Pentel and Kurland patent references are directed to restaurants in which the
11 patrons travel to the restaurant for fulfillment of orders. There is no disclosure or suggestion
12 in either of the Pentel and Kurland that the restaurants need to be concerned with the
13 destination of a vehicle or the itinerary of a passenger on the vehicle.

14 Pentel is directed to a system for vehicles in the drive-through lane of a restaurant. The
15 portion of Ehret cited in the Office Action as support for the asserted combination pertains to
16 "accessing a database of time zone information to obtain the time zones of the trip departure
17 location and the trip destination location". Notwithstanding, there is no suggestion in Ehret
18 that vehicles of a type suitable for entering the drive-through lane of a restaurant would likely
19 induce body dysfunction in passengers as such vehicles do not travel fast enough to rapidly
20 pass through several time zones.

21 Neither is there any support in Kurland for the asserted modification. Kurland is directed
22 to patron seating in a restaurant, and there is no suggestion that the restaurant needs to be
23 concerned about the itinerary of the patrons.

24 Therefore, there is no basis for the modification asserted in the Office Action for
25 rejecting Claim 16. The only basis for the asserted modification is the present application,
26 which is improper hindsight reasoning.

1 Even if the asserted modification was proper, it still would not meet all of the
2 recitations of Claim 16. For example, Claim 16 recites "estimating service orders expected to
3 be received and recommending inventory for transport with the vehicle for onboard
4 fulfillment of service orders." The Office Action does not cite to any portions of Pentel,
5 Kurland, or Ehret that disclose or suggest the foregoing recitation as none of the references
6 are concerned with transporting inventory on a vehicle. Hence, the asserted modification does
7 not meet all of the recitations of the claim. Accordingly, reconsideration and withdrawal of
8 the rejection of Claim 16 is respectfully requested. Likewise, the same is requested for
9 Claim 17, which depends from Claim 16 and therefore distinguishes over the cited prior art
10 for at least the same reasons as Claim 16.

11 Claim 18 depends from Claim 17 and further recites that "wherein the other
12 computers includes kiosks at terminal areas." The Office Action rejects Claim 18 on the basis
13 that "Official notice is hereby taken that it is old and well known to have kiosks at terminal
14 areas" and that it would have been obvious "to modify Pentel to include these features in
15 order to make the computers more accessible".

16 Applicants respectfully traverse the rejection of Claim 18. Modifying Pentel to
17 include a kiosk would defeat the intended purpose of the invention taught in the cited patent.
18 According to Col. 2, lines 21-24 of Pentel, "an object of the present invention is that the
19 customer may enter an order on a hand-held device within the vehicle without opening a
20 window and leaning out of the vehicle."

21 Modifying Pentel to include kiosks would defeat the foregoing object. The customer
22 would be required to exit the vehicle to use the kiosk. Pentel therefore teaches away from
23 Claim 18 and as previously discussed, MPEP 2145 provides that "[a] prior art reference that
24 'teaches away' from the claimed invention is a significant factor to be considered in
25 determining obviousness"

26

1 Also as discussed earlier, in rejecting a claim as an obvious modification of prior art,
2 the teaching or suggestion to make the asserted modification must be found in the prior art,
3 and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed.
4 Cir. 1991). No support for the asserted modification is present in the cited prior art. Pentel
5 teaches away from the asserted modification as it is contrary to an object of the invention
6 stated in Pentel. Therefore, the only suggestion for the asserted modification is applicant's
7 disclosure, which is improper hindsight reasoning.

8 The remaining claims in the application are Claims 19-24, which each depend
9 directly or indirectly from Claim 16 and further distinguish the invention over the prior art.
10 For example, Claim 21 depends from Claim 16 and recites "wherein the external computer
11 software is further operable on the external computer for recommending based on the
12 database information, inventory for terminal storage for replenishing onboard inventory." The
13 Office Action rejects Claim 21 as obvious over a combination of the Pentel, Kurland, Ehret,
14 and Ogasawara references. However, as discussed above in connection with Claim 5, there is
15 no disclosure in the Pentel patent directed to carrying inventory on a vehicle. To the contrary,
16 the suggestion in Pentel is that inventory is maintained in a building, not the customer's
17 vehicle. Further, Ogasawara does not disclose recommending inventory, but rather a
18 replenishment list for the consumer, not the merchant. Thus, Claim 21 further distinguishes
19 over the cited art in addition to the reasons discussed for Claim 16.

20 Claim 22 depends from Claim 16 and recites in pertinent part onboard computer
21 software operable on the onboard computer for causing the onboard computer to perform
22 tasks including:

23 a) obtaining service information from the external computer via communication with
24 the external vehicle computer if a communication pathway to the external vehicle
computer is open; and

25 b) providing access to service information by vehicle personnel for fulfillment thereof.
26

1 The asserted onboard computer is a handheld device, which Pentel teaches as
2 including only a transmitter and no receiver. Without a receiver, there is no way for the
3 asserted onboard computer in Pentel to obtain service information from an external computer.
4 Further, the handheld device is illustrated in Pentel as not including a display so there is no
5 way for the handheld device to provide access to service information.

6 These are just some examples of how claims dependent directly or indirectly from
7 Claim 16 further distinguish over the cited prior art. For brevity, further examples of such
8 claims dependent directly or indirectly from Claim 16 are omitted.

9 In view of the discussion above, it believed to have been shown that all of the claims
10 distinguish over the cited prior art. Pursuant to 37 CFR 1.112, reconsideration and re-
11 examination of the application is therefore accordingly requested, and withdrawal of the
12 rejections and allowance of the claims. If there are any questions, please contact the
13 undersigned attorney for applicant.

14 Respectfully submitted,

15 

16 Brian P. Furrer, USPTO Reg. No. 37,627